SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO: 1206

JOHN CARROLL SOX,

Petitioner,

VERSUS

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner, John Carroll Sox, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on January 11, 1968.

CITATION TO OPINIONS BELOW

The Petitioner has been informed by the Clerk of the United States Court of Appeals for the Fourth Circuit, that the opinion was a per curiam affirmation of the action of the United States District Court for the District of

South Carolina, has not been printed and is, therefore, not available to this Petitioner. The Judgment entered January 11, 1968 is printed in the Appendix to this Petition.

JURISDICTION

The Judgment of the United States District Court for the District of South Carolina was affirmed by the United States Court of Appeals for the Fourth Circuit on January 11, 1968 and this Judgment is a final Judgment in this matter.

The jurisdiction of the Court is invoked pursuant to Title 28 United States Code, Section 1254 (1) Petitioner having asserted below and is asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED

Question One

Were the Petitioner's rights, privileges and immunities guaranteed to him by the Fourth Amendment to the Constitution of the United States violated by the law enforcemen officers, when they arrested him without warrant and searched his personal property without a search warrant there having been ample time to secure either.

Question Two

Did the manner of the search and seizure and the later use of the goods seized in effect require the Petitioner to give evidence against himself in a criminal case, thereby violating his rights and immunities under the Fifth Amendment to the Constitution of the United States.

Question Three

Did the Trial Court err under the facts of this case in refusing to Suppress the introduction of evidence seized without Warrant by the Government at the time of the arrest of the Petitioner on October 19, 1966.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves Article IV (The Fourth Amendment) of the Constitution of the United States.

2. This case involves so much of Article Five (The Fifth Amendment) of the Constitution of the United States as reads "Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law".

3. Title 18 Section 2315 Code of Laws of the United States.

STATEMENT OF FACTS

On October 19, 1966, in the City of Charleston, County of Charleston, in the State of South Carolina, the Petitioner was arrested by agents of the Federal Bureau of Investigation, without a Warrant and shortly thereafter jailed in Charleston, South Carolina. The Petitioner was subsequently charged in an Indictment for violation of Section 2314, Title 18 of the United States Code and Section 2315, Title 18 of the United States Code. Arrested on the same day with the Petitioner, but not at the same location, were Donald Ray Pridgen and Norman Lee Hairr. The latter two (2) being charged also with violation of Section 2314, Title 18 of the United States Code. This Petition only involves the Petitioner John Carroll Sox. The Petitioner received a court appointed attorney of Charleston, South Carolina, Mr. Morris Rosen, who represented the Petitioner in a Motion to Suppress, heard before the Honorable J. Robert Martin, Judge, United States District Court. The Motion to Suppress resulted in a finding in favor of the Government.

Subsequently, the Petitioner employed his own counsel, and upon Motion, Mr. Rosen was relieved of further representation. The matter came on to be tried in District

Court, Charleston, South Carolina, on July 10, 1967 and upon the trial of the matter, a verdict of not guilty was rendered on the second count of the Indictment (Section 2314, Title 18) and a verdict of guilty was rendered on the third count of the Indictment (Section 2315, Title 18), and the Petitioner was sentenced to ten (10) years imprisonment.

Timely Notice of Intention to Appeal was given and the matter was heard by the United States Court of Appeals for the Fourth Circuit which affirmed the action of the District Court.

The facts surrounding the arrest and detention of the Defendant are, as follows: The Petitioner owned and operated a motor lodge and restaurant in Kenly, North Carolina, about thirty-five (35) miles from Raleigh, North Carolina. On or about October 16, 1966 Norman Lee Hairr entered, at night, the premises of Carolina Casuals, Inc., a dress manufacturing establishment, at Wilson, North Carolina, also near Raleigh, North Carolina. During the robbery of Carolina Casuals, Inc., Hairr took numerous articles of women's apparel which were later discovered, or claimed to have been discovered, in a truck in Charleston, South Carolina, on October 19, 1966. With the truck at the time of the discovery of the truck and the merchandise, was the Petitioner Sox. On the trial of the matter it was determined that the Petitioner Hairr had transported the articles from North Carolina to Charleston, South Carolina. Pridgen was acquitted by the jury.

That with reference to the sequence of events as they concern this Petitioner, it appears that the Government alleges that Agent Belk of the F.B.I., received information from a "reliable source" at about 12:00 noon on October 19, 1966 that stolen property, belonging to Carolina Casuals, Inc., was in the Charleston, South Carolina area. Acting on such information, Agent Belk set up a surveillance at 2:45 P.M., October 19, 1966 at the corner of Pitt and

Montague Streets, Charleston, South Carolina. At about 3:00 P.M. he saw a U-Haul-It truck bearing North Carolina License No. 91H drive up and park at such intersection and he observed the Petitioner and one Theodore Floyd in or near the truck. The Agent followed the Petitioner, who drove the truck to the Ashley River Bridge at 3:25 P.M., and then drove the truck to the corner of Veneer and Scott Streets, Charleston, South Carolina. At 4:00 P.M. Agent claimed Petitioner parked and left the truck, got into an automobile and drove off. The Agents kept the truck under surveillance as it stood parked until about 6:30 P.M., when the Petitioner returned and was arrested. The agent had contacted Charlotte, North Carolina for information on the truck and on the alleged theft. After receiving information from Charlotte, North Carolina between 4:00 and 5:00 P.M., he then re-contacted the informant and at 6:31 P.M., on the same day, arrested the Petitioner at the truck. The petitioner denied any illegal activity and was warned by the Agent of his constitutional rights, according to the Agent. The Petitioner was required to sign a waiver and was then interviewed by the Agent in an automobile. Throughout all of this period, from the receipt of the original information, until the actual arrest, late in the evening, no Warrant of any type, either arrest or search, was secured even though the Government had all of the information necessary during the course of the afternoon, and the district attorney and the United States Commissioner were within fifteen (15) minutes distance of the spot at all times.

REASONS FOR GRANTING THE WRIT

It appears from the decisions of the Court over the years that the Court has sedulously avoided hard and fast rules and doctrine as to what is or is not violative of the Fourth and Fifth Amendments to the Constitution; and has consistently held that each case must be decided on its own facts.

The Fourth Amendment has always been interpreted as protection of the privacy of the individual.

But this Amendment prohibits unreasonable searches and by inference permits reasonable searches. *Carroll v. United States*, 267 U. S. 132, 147; 69 L. Ed. 543, 548; 45 S.Ct. 290.

The historical purpose of this amendment was to protect the privacy of the individual from over-zealous officers and place the protection of that privacy under the considered judgment of a magistrate.

In *Go-Bart Importing Co. v. United States*, 282, U. S. 344, 357; 76 L. Ed. 374, 382; 52 S. Ct. 153, this court stated:

> "There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances."

The Petitioner in this case holds that under the circumstances the search of his truck and the impounding of the goods found therein without a search warrant was not necessary or legal and in fact amounted to a fishing expedition in search of evidence with which to secure a conviction and that although there may have been such probable cause as to render his arrest without a warrant legal, the search and seizure without a warrant was nevertheless illegal. As this court stated in the *Go Bart Importing* case, *supra* "an arrest may not be used as a pretext to search for evidence." Likewise in the *Carroll* case, *supra*, the Court stated:

> "The mere fact that there is a valid arrest does not *ipso facto* legalize a search and seizure."

In the present case, the government agents first received notice through an informant that there was present in the City of Charleston a truck loaded with stolen ladies garments and that this truck would be at a certain spot at about 3:00 P.M. This information came to the government agents about 12:00 noon, October 19, 1966. (A 2).

That at this point, the government did not have enough information upon which to base either an arrest warrant

or a search warrant is admitted; what they did have was a "hot tip" from an informer whom agent Belk insisted was reliable. (A 2) although admittedly information obtained from this source had never resulted in a conviction or even served as a basis for a prosecution. (A 9).

Based on the information received, the Federal Bureau of Investigation set up a surveillance in the area of Pitt and Montague Streets, (A 2) the spot at which the informer had predicted the truck containing the garments, driven by a large man would appear.

At 3:00 P.M., as predicted, a U-Haul It truck, driven by a large man appeared at Pitt and Montague Streets.

At that moment, it is submitted, the government had sufficient facts in its possession to constitute probable cause and sufficient information to constitute a basis for the issuance of a search warrant, provided, however, that the agents were as convinced of the reliability of their informer as government testimony would indicate (A 2-9-18), an informant whose information had never produced either a prosecution or a conviction. (A 9).

They did not make an arrest, but Mr. Harry C. Belk, assisted by five or six other agents of the Federal Bureau of Investigation continued surveillance.

The truck was moved by the same driver and driven first to another location described as the area of Patio #1 and the Fork Restaurant, then after a short time to an area described as Veneer and Scott Streets (A 3) and there the truck was parked at about 4:00 P.M. and there the truck remained under the watchful eyes of five or six F. B. I. agents until 6:31 P.M. when the actual arrest of this Petitioner occurred.

The government would have us believe that this long wait was occasioned by the fact that they were waiting for information requested through their Charlotte offices.

It strains credulity to be asked to believe that, if in fact they believed their informant to be reliable, they would

have permitted the suspect whose identity they claim they did not know, to get into an automobile and drive away, and not become alarmed, as a period of two and one-half hours passed before his return, but would sit and placidly watch a parked truck. They had no means whatsoever of knowing whether or not the suspect had been alerted to the surveillance and no means of knowing whether or not he would ever return.

They would have us believe that they did not move because they were waiting for radio information from North Carolina and this information, when it came, was very little more than the officers already had at their command; simply that there had been a recent theft of ladies garments from "Carolina Casuals" in Wilson, North Carolina and an apparent general description of the garments. (A 5).

This information came between 4:00 and 5:00 o'clock (A 14) and still the agents waited and watched for another one and one-half or two hours, and all the while the United States Attorney and a U. S. Commissioner were within a few blocks; just a few minutes away.

Here, as in the case of *Trupiano v. United States*, 334 U. S. 399, 92 L. Ed. 1663, 685 S. Ct. 1229, the Court stated:

> "No reason was given for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate, these are never very convincing reasons."

To summarize, for two and one-half hours, these agents, of whom there were six or seven, had the truck within their sight; in fact, it might be said in their possession.

They very definitely knew the place to be searched, they knew at three o'clock a fair description of the goods they sought, they knew between four and five o'clock, a more accurate description of the goods and yet they made no move to comply with the law which governed their actions and

they gave no reason at the hearing on the Motion to Suppress or at the trial.

Had there been one agent alone or even two agents, their actions might have been understandable, but with five, six or more, nothing appears here but an utter disregard of the constitutional mandate.

Assuming that the arrest of the Petitioner was lawful, the officers certainly had a right to search his person; a right based on the necessity of searching for weapons or other means by which the person might escape or injure the officers, but does it follow that the right extended to a search of his property. We believe not and it would appear that this court takes a similar attitude as in *United States v. Lefkowitz* 285 U. S. 452, 464; 76 L. Ed. 877, 882, 52 S. Ct. 420; 82 A.L.R. 775. The court here found that the search of the person of Lefkowitz was lawful and that the things taken might be used against him, but held that the things seized when the office and furniture were explored did not belong in the same class and the Court held: "To the firmly rooted proposition that what are called general exploratory searches are forbidden."

In the instant case when, at long last, an arrest was made and again assuming that under the circumstances the arrest was legal without an arrest warrant, the Petitioner was coerced into aiding a search. He was asked to give the keys to the van body of the truck and he gave a set of keys but not the right set. The right keys were finally obtained by threat. (A 31, 34).

Coercion cannot be denied; the Petitioner was under arrest, seated in a government automobile, surrounded by government agents; Mr. Belk says one; although there had been five or six and no indication that any had yet been sent away.

The Petitioner was threatened at least with a strip search and possibly more since the government admitted that he was coerced. (A 34).

It would appear that this case falls within the principle of *Gouled v. United States*, 255 U. S. 298, 303, 304; 65 L. Ed. 647, 650, 651; 41 S. Ct. 261.

In this case, the court said:

> "In practice the result is the same to one accused of crimes, whether he be obliged to supply evidence against himself, or whether such evidence be obtained by an illegal search of his premises and seizure of his private papers. In either case, he is the unwilling source of the evidence and the Fifth Amendment forbids that he shall be compelled to be a witness against himself in a criminal case."

The situation can be no better discussed than was done by Mr. Justice Jackson in his dissenting opinion in the case of *United States v. Robinowitz*, 339 U. S. 56; 70 S. Ct. 430; 94 L. Ed. 653 (1950) where he said:

> "To tear 'unreasonable' from the context and history and purpose of the Fourteenth Amendment in applying the narrow exception of search as incident to an arrest is to disregard the reason to which reference must be made when a question arises under the Fourth Amendment. It is to make the arrest an incident to an unwarranted search instead of a warrantless search incident to an arrest, The test by which searches and seizures must be judged is whether conduct is consonant with the main aim of the Fourth Amendment. The main aim of the Fourth Amendment is against invasion of the right of privacy as to ones effects and papers without regard to the result of such invasion. The purpose of the Fourth Amendment was to insure that the existence of probable cause as the legal basis for making a search was to be determined by a Judicial Officer before ar-

rest and not after, subject only to what is necessarily to be excepted from such requirement.

The justification for intrusion into a man's privacy was to be determined by a magistrate, uninfluenced by what may turn out to be a successful search for papers, the desire to search for while right, may be the very reason for the Fourth Amendment's prohibition.

The provisions did not regard judicial authorization as a formal requirement for a piece of paper, they deemed a man's belongings part of his personality and his life."

The Government would have us accept its actions as caused by necessity because a motor vehicle was involved; however, permission to search a motor vehicle, boat or van is rooted in necessity, even in the *Carroll* case, *supra*, the court said:

"In cases where the securing of a warrant is reasonably practical, it must be used."

And in *United States v. Jeffers*, 342 U. S. 48; 72 S. Ct. 93; 96 L. Ed. 59, it is said:

"Over and again this court has enjoined that the mandate of the Amendment requires adherence to judicial process."

The importance of the Fourth and Fifth Amendment cannot better be shown than by quoting the language of the court in the *Gouled* case, *supra*, where it referred to *Boyd v. United States*, 116 U.S. 630 29 L. Ed. 746; 6 S. Ct. 524; *Weeks v. United States*, 232 U.S. 383, 58 L. Ed. 652; 34 S. Ct. 341; *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 64, L. Ed. 319; 40 S. Ct. and said:

"the importance to political liberty and to the welfare of our country is the due observance of the rights guaranteed under the Constitution by

these two amendments. The effect of the decisions cited is:

> That such rights are declared to be indispensable to the full enjoyment of personal security, personal liberty and private property, 'that they are to be regarded as of the very essence of Constitutional Liberty.'
>
> It has been repeatedly decided that these amendments shall receive a liberal construction, so as to prevent encroachment upon or gradual depreciation of the rights secured by them, by imperceptable practice of courts, or by well intentioned but mistakenly over-zealous executive officers."

The principles heretofore enunciated appear to be applicable to all cases involving the Fourth and Fifth Amendments.

In this respect, we quote from the opinion of Mr. Justice Black in the case of *Cooper v. State of California*, 386 U. S. 58; 17 L. Ed 2nd, 730; 87 S. Ct. 788:

> "We made it clear in Preston that whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case and pointed out, in particular, that searches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home, a store, or other fixed piece of property. 376 U. S. at 366-367, 11 L. Ed. 2d at 779, 780. In Preston the search was sought to be justified primarily on the ground that it was incidental to and part of a lawful arrest. There we said that 'once an accused is under arrest and in custody, then a search made at another place,

without a warrant, is simply not incident to the arrest."

We cannot better summarize the situation involved in this case than by quoting the language of Judge Learned Hand in *United States v. Kirchenblatt*, (C.A. 2nd N. Y.) 16 F. 2d. 202, 203, quoted with approval in the *Lefkowitz* case *supra*:

> "Nor should we forget that what seems fair enough against an inconsequential huckster of bad liquor may take a very different face, if used by a government determined to suppress political opposition under the guise of sedition."

As the learned justice said, the progress is too easy, if the bulwarks are eroded by permissive authorization of forbidden conduct, to the police state.

There is ample law and precedent to permit thorough investigation of any suspected criminal offense or activity, to permit police or law enforcement officers to evade the laws application for reasons of convenience or any other reason cannot but lead eventually to the destruction of the security of the individual as to his person or property.

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari should be granted.

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TESTIMONY OFFERED IN OPPOSITION TO THE MOTION TO SUPPRESS

Motion in the above entitled cause came on to be heard in Charleston, South Carolina, at the United States District Court, on the 30th day of May, 1967.

Before: HON. J. ROBERT MARTIN, JR., Presiding

MR. HARRY C. BELK, called as a witness in behalf of the Government, who being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. State your full name, please?
A. Harry C. Belk.
Q. Mr. Belk, by whom are you employed?
A. Federal Bureau of Investigation.
Q. How long have you been so employed?
A. Approximately eighteen years, sir.
Q. In what capacity?
A. As a special agent, sir.
Q. Have you ever been assigned to Charleston, South Carolina?
A. I have, sir.
Q. When did you come here first?
A. In May, 1962.
Q. What is your present duty assignment?
A. Cincinnati, Ohio, sir.
Q. You came here when?
A. In May, 1962.
Q. Were you here on or about October 19, 1966?
A. I was, sir.
Q. Did you have occasion on that date to have any contact with an informant?
A. I did, sir.

Q. All right, sir. Would you state what your association had been with this informer prior to October 19, 1966?

A. Yes, sir. I had been what we call operating him for approximately five years.

Q. All right, sir. Had you had regular contact with him prior to October 19, 1966, for a period of approximately five years?

A. Approximately, yes, sir.

Q. All right, sir. Will you state whether or not he ever furnished you any information in the past?

A. He had, sir.

Q. What was the nature of this information?

A. The information in every instance, sir, was reliable.

Q. Had he furnished you information on more than one occasion?

A. He had, sir.

Q. All right, sir. On October 19, 1966, you say you were contacted by him?

A. That is correct, sir. He called my office; I was not in at the time; the message was relayed to me and I returned the telephone call, at which time he told me that there was a truck load of stolen ladies suits in Charleston, South Carolina, that they were from out of state. He did not know the name of the state, sir.

Q. All right, sir. Did he give you information as to where these stolen ladies suits, or clothes were, or at a point of time or place where they could be located?

A. He did, sir. He said that at approximately 3:00 P.M. that same day, October 19, 1966, that the clothes, the truck, and the individual driving it would be in the vicinity of Montague and Pitt Streets here in Charleston, South Carolina.

Q. As a result of receiving that information, what if anything, did you do?

A. I set up a surveillance in the area of Pitt and Montague Streets, sir.

Q. Approximately what time did you arrive there?

A. Approximately 2:45 P.M., sir.

Q. What, if anything, happened after you set up this surveillance?

A. Shortly after I arrived there, sir, I observed a truck U-Haul-it, bearing 1966 North Carolina license 91 H drive up and park right at the corner of Pitt and Montague, an individual large in build, white male, subsequently identified as defendant John Carroll Sox, was driving the truck, sir.

Q. Did you see anybody else on that occasion?

A. Yes, sir. He got out of the truck, locked it, or appeared to lock it, and went across the street. A few minutes later, very short time later, I observed him in company of a man on crutches who had one leg, identified as Theodore L. Floyd. They went out to the truck, looked at the truck and then Floyd got in his car and Sox got in the truck and followed. They went to the area of Patio No. 1, and the Fork Restaurant. Stayed there for a short period of time, and then proceeded out Highway 61, Highway 7, and Azalea Drive, over to Veneer and Scott Streets.

Q. You maintained a surveillance of the truck and car at that time?

A. That is correct. The truck was following the car at that time, sir.

Q. All right, sir. After you saw the truck and saw the man, that you describe as later being identified as Sox, on the first occasion, what, if anything did you do, sir?

A. I immediately communicated with my Charleston office giving them a description of the truck and a description of the individual driving it; asked them to go through my Columbia office to Charlotte, to our Charlotte F.B.I. office; determine if there had been a theft of clothes within the recent past; and to, of course, get descriptive data on the truck, when it was rented, and to whom.

Q. All right, sir. Now, I believe I got you out of sequence. You testified that the truck left the Patio and Fork, and

went to an area you have described. What, if anything, happened after it got there, Mr. Belk?

A. After the truck got there, I did not actually observe the truck being opened. There are other agents who could testify in that regard, sir.

Mr. Rosen: Your Honor, we object.

Q. Don't go into anything you don't know. Did you subsequently see the truck parked there?

A. I subsequently saw the truck parked there, and I also a short time later saw Sox and Floyd drive away in Floyd's automobile.

Q. All right, sir. Did you maintain a surveillance on the truck?

A: I did, sir.

Q. All right. Later, or some time after that, did you have a further contact with your informant?

A. I did, sir. I had a further contact with my informant, at which time he told me that there were two other individuals involved in this case, who were in Charleston, South Carolina. He did not know their identities, and he did not know where they were.

Q. All right, sir. When is the next time you saw the defendant Sox in connection with this truck, sir?

A. At approximately 6:30 or 6.31 P.M. on October the 19th. Sox and Floyd came to the Scott Street, Veneer Street area; Sox got in the truck and started to drive away, at which time I took him into custody and also Floyd was taken into custody, sir.

Q. All right, sir. Did you identify yourself as an F.B.I. agent?

A. I identified myself as a Special Agent of the F.B.I.

Q. Describe to the court exactly what you did when you arrived at the truck?

A. As soon as I arrived at the truck I went to the driver's side, I opened the door; I said we're F.B.I. agents, you are under arrest. I took him out of the truck. I put him in the F.B.I. car. I immediately advised him of his rights. I ex-

hibited to him a written form setting forth just what his rights are. I asked him to read that form. He read the form, and he executed it by signing his name in my presence, sir.

Q. Mr. Belk, prior to making the arrest, would you state whether or not you received any information back from Charlotte, North Carolina?

A. I did, sir. I received information from our Charlotte office that on October 16, 1966 Carolina Casuals, Inc. at Wilson, North Carolina, had been broken into and approximately $35,000.00 worth of ladies suits stolen from that company.

Q. All right, sir. Did they give you a general description of these clothing?

A. Yes, sir. We got a description of the clothing.

Q. Did they say anything to you about how it was contained when it left the plant, or anything?

A. Yes, sir. They stated the clothing, that hampers were also missing, and that the hampers would reflect on the outside the name "Lori" and Carolina Casuals, Inc.

Q. All right, sir. Now, I believe you said you put Mr. Sox—you advised him that you were an agent, he was under arrest, you put him in the car and immediately explained his right to him, and signed a waiver, is that correct, sir?

A. Yes, sir. He stated that he would be happy to talk. He almost immediately stated that he had nothing to do with that truck, that he was merely moving it for a couple of friends. I asked him who the friends were, and he stated that Prodgen and Hairr had driven the truck from North Carolina to Charleston, South Carolina. He also told us that they were presently at the Orvin Court, that his automobile was there, that he had loaned—that he had met them in Charleston, South Carolina, and had loaned them money to pay the motel bill. He denied any knowledge of what was in the truck itself.

Q. Mr. Belk, will you state whether or not the back of the truck was locked?

A. The back of the truck was locked, yes, sir.

Q. Did you have any conversation with Mr. Sox with regard to the lock on the truck?

A. I did, sir, I asked him for the key to the lock on the truck. He initially gave me a ring of keys. It was dark at that time, so I backed up the F.B.I. car, turned the lights on so that it would light up the rear of the truck. None of those keys would fit. I got back in the automobile, and I said none of these keys will fit. I said where is the key; and at that time he says this is the key that you are looking for. I asked him whose lock it was, and he stated that the lock belonged to him, that he had no idea how it got on the truck, that the last he knew the lock was in his automobile. That key did unlock the lock. At this time I unlocked the truck,

THE COURT: Who unlocked it?

A. I unlocked it, Your Honor.

Q. All right, sir. Did he give you the key that opened the lock?

A. Yes, sir.

Q. You opened it, took the lock off and opened the back of the truck?

A. Yes, sir.

Q. All right. What, if anything, did you find in the truck?

A. Loaded with ladies suits. The hampers reflected the name, Carolina Casuals and Lori, as I had been informed, as I had learned that from Carolina Casuals that that was the name supposed to appear on it. There was a great quantity of ladies suits. I looked at them, and they fitted the general description of the suits; the numbers I did not have time to go into at that particular time.

Q. All right. You previously stated that Sox, after signing a waiver, advised you that there were two other individuals in Charleston he was handling the truck for?

A. Yes, sir.

Q. He gave you their names?

A. He gave me their names, yes.

Q. He also tell you where they were?

A. Yes, sir.

Q. As a result of receiving that information, what, if anything, did you do?

A. I furnished that information to other F.B.I. agents, sir.

MR. SIMPSON: All right, I have nothing further to ask, Your Honor. Answer any questions counsel may ask you.

CROSS EXAMINATION

BY MR. ROSEN:

Q. Mr. Belk, when did you first arrive in Charleston stationed here as an agent? I missed that.

A. In May, 1962, sir.

Q. '62?

A. Yes, sir.

Q. And this arrest occurred in . . .?

A. October 19, 1966.

Q. So you had been here about four and a half years?

A. About four and a half years.

Q. So you were mistaken with respect to having been in contact with informer for five years?

A. Well, four and a half years, that's correct, sir.

Q. Did you meet this informant as soon as you arrived in Charleston?

A. Yes, sir.

Q. And this informer informed for you, or informed to you in connection with what types of crimes?

A. Your Honor, I got a problem. It was a wide variety of items that he did furnish us, Mr. Rosen. The informant, I might say, the reason I met him as soon as I came to Charleston is that I—another agent had previous contacted him, and I merely took over from that other agent.

Q. And this informant was not specialized in any particular criminal field as is usual with an informant?

A. In other words you're getting into an area, we're happy to receive any type of information, Mr. Rosen. I don't know that I could say they were particularly specialized in any particular area. We would like to have more of them specialized, yes, sir.

MR. ROSEN: Your Honor, after all reliability of the informer is one thing before Your Honor . . .

THE COURT: No question about that, but you can't do indirectly either, what you know you can't do directly. In other words, he doesn't have to reveal who it is, but you can force him, and that's what is giving me, and I know that's what is giving him the concern, that if you pinpoint his information, you just as well publicize who he is.

MR. ROSEN: Your Honor, I realize that. On the other hand, this informant—generally with informers, you have an informer in one area, and perhaps one in another. Having an informer who deals in interstate commerce is rather unusual, and I was just trying to find out, certainly without trying to identify the man, while I propose to ask him the question I'm certain Your Honor is not going to allow him to answer that question. I wasn't trying to get any hints to show anybody, but it seems strange to us that an informer would be sort of full-time apparently from the time this agent got here until the time this occurred. He was a man who had informed for five years on apparently a multitude of different types of cases. Is that right?

A. Yes, sir, Mr. Rosen. A multitude of different types of things, yes.

MR. ROSEN: So here again I'm not trying to be specific, he informed to you over this period of four and a half years on many occasions in cases other than mercantile stolen good cases?

A. Yes, sir.

Q. Narcotics, liquor, stuff like that?

A. Well, no, sir. We have no jurisdiction as far as whiskey or narcotics are concerned. But if he passed any information along to me, I would merely disseminate it. That was not primarily my area, sir.

Q. Mr. Belk, did you ever come in court and get any conviction on any information this informer gave you?

A. No, sir.

Q. So the entire time you have had any contact with him, this informer, his information wasn't reliable enough to get you a verdict of guilty in this court house, was it?

Mr. Rosen, the information that he furnished was helpful, was reliable, but in many instances would not necessarily lead to a successful conviction in this court, that is correct, sir.

Q. That's correct, but not in many instances, in all instances you testified you had no conviction over this entire period?

A. I have no recollection of any conviction I received . . . .

THE COURT: Let him finish, Mr. Rosen.

A. I have no recollection, Mr. Rosen, at this time of any information that he furnished that resulted in a conviction in this court, sir.

Q. And he had called you on numerous occasions over this period of four and a half years?

A. Yes, sir.

Q. And on every single occasion whatever information he gave you work out to no conviction in this court, is that correct?

A. That is correct, sir.

THE COURT: Well, was there any prosecution on it?

A. No, sir. There was no prosecutions on them either.

THE COURT: You couldn't have had a conviction without prosecution.

A. There were no prosecutions, sir.

Q. There were no prosecutions?

A. No, sir.

Q. So consequently at the time you received this phone call, you had a history of this fellow of giving you information consistently over this four and a half year period that never even worked out to indictment, prosecution, isn't that correct?

A. That is correct, sir.

Q. Now, Mr. Belk, did the fact that Mr. Sox had given you a bunch of keys, none of which fit this van, did that convey to you a message he didn't want you to open the van?

A. I fully suspected he did not.

Q. You got that definite feeling from the fact the keys that you got from him didn't open the van?

A. Yes, sir.

Q. Then you went back to him and told him they didn't open the van?

A. Yes, sir.

Q. And that y'all had ways of getting in, he may as well give you the key, or words to that effect?

A. You want—as well as I remember, Mr. Rosen, I took the keys back to him and he could, of course, see they wouldn't fit. I'm sure he knew in advance they wouldn't fit, and I took them back and I said I can't give you a strip search out here, and I feel sure that the key is on your person, I would like to have it. At that time he says this is the key you're looking for.

Q. And at that time you were seated in a Government vehicle?

A. Yes, sir.

Q. Surrounded by how many F.B.I. agents?

A. Mr. Rosen, I think at that particular time there was only one other agent that was with me, and I believe that I had already dispatched the other agents to locate the other two men.

Q. In other words, when Mr. Sox and Mr. Floyd arrived there were more than two of you, then some left later?

A. No, sir. There were more agents up there than that.

There were about, I think, five or six including myself at that particular time.

Q. At the time they arrived at the scene 6:30 or so, six agents there?

A. Either six—or well, in other words, five, six or seven. I'm not exactly sure.

Q. And it was nighttime?

A. Yes, sir. It was dusk dark.

Q. And the place where this occurred was off Dorchester Road in a rather deserted area?

A. No, sir.

Q. Residentially deserted?

A. Well, residential and business.

Q. But there wasn't any traffic or anything where you were?

A. No, sir.

Q. And it was nighttime?

A. Yes, sir.

Q. And after you placed the defendant Sox, under arrest, did you say that the agents did not remain? Well I'm referring to the time you got the keys?

A. Right. Mr. Rosen, so much was happening at the particular time, I want to be fair and I just have no specific recollection. This I do know, is that one other agent was with me during the interview of the defendant, Sox. The other agents could have been in the immediate area. Two of them had Floyd in custody; and the others at that particular time, they were in radio contact, and probably still in the same area, but they were not in the automobile with us at that time.

Q. Now, Mr. Belk, at that time you had information as to the other people, or other suspects in this crime, or alleged crime?

A. I'm sorry?

Q. Well, you testified Mr. Sox had given you two names?

A. Yes, sir.

Q. And you knew where they were?

A. Mr. Sox told us where they were.

Q. Had the informer told you the whereabouts of these two men?

A. He did not know, sir.

Q. He did not know?

A. No, sir.

Q. He only knew about the truck and Mr. Sox?

A. Yes, sir.

Q. But at the time you arrested Mr. Sox, or rather shortly thereafter you learned about the whereabouts of the other men?

A. Yes, sir.

Q. And you, I assume, sent agents down to arrest them?

A. Yes, sir.

Q. Now, Mr. Belk, at that time this truck was parked in an area where you would have had no difficulty in surveying it, or taking custody of it at that point until you could obtain a search warrant, did you?

A. In my opinion, Mr. Rosen, I didn't think so, sir. I felt that time was more or less of the essence. I knew that the other two men, that there were two other men, I assumed that they were aware of Mr. Sox told me they were, but they had his automobile so they could have been out elsewhere? Also I had no information to the contrary that there were not even additional people involved in this thing.

Q. Mr. Belk, at that time you had at your disposal either five, six, or seven F.B.I. agents including yourself?

A. Yes, sir.

Q. So there would have been no difficulty in leaving two of them to protect the truck until you obtained a search warrant—no way for anyone to drive that truck off with you there, was there?

A. Well, we had a problem of nighttime; not knowing who else was involved; and I say at the particular time, if I sit back and say to date what I would have done, I might have done something different, but at that particular time, Mr. Rosen, I didn't feel that I had much choice, with night-

time, not knowing how many other people were involved. Some indication that some of them may have had guns, may be dangerous. I didn't feel that—I felt that it was too much of a risk to run.

Q. Well, opening the truck didn't remove the danger of any defendants or criminals with guns arriving at the scene, we're talking about search and seizure.

A. No, sir.

Q. No reason why you couldn't have waited and got the search warrant with the truck immobilized there, there was no other driver present?

A. No other driver present so far as I knew, no, sir.

Q. And it was parked?

A. Yes, sir.

Q. And to your certain knowledge it had been parked there since that afternoon at about 3:00 o'clock.

A. Well, since a little after 4:00.

Q. Excuse me, sir. He had left town about 3:00.

A. Yes, sir.

Q. So from 4:00 o'clock until the time you opened the back of this van about 6:35?

A. 6:31 I think. Opening it would have been about 6:35 I guess or 6:40.

Q. That truck was in the same spot?

A. Yes, sir.

THE COURT: Let me interrupt right there. There's something I'm interested in. You said in that interim of time you contacted the Charlotte office through your Columbia office, and that subsequently you received additional information as to the breaking and entering and theft of these merchandise, and I believe you said Wilson, North Carolina?

A. Yes, Your Honor.

THE COURT: Approximately when did you receive that information, Mr. Belk?

THE COURT: In other words, you didn't have that information, my understanding, at 4:00 o'clock?

A. No, sir, I did not. Your Honor, I did not have that information until it would have been some time between 4:00 and 5:00, and I received it over the car radio. They had called down from Columbia to pass the information along and I received it on the radio, so it would have been after the truck had been parked, sir.

Q. Mr. Belk, getting back to the informer for a moment, did the informer tell you what he based his information on that this truck contained stolen merchandise?

MR. SIMPSON: Your Honor, he has said what information he got from the informer, and it might develop that if he is required to go in detail as to information, it could conceivably reveal the source of the information. I think the test is he got the information.

THE COURT: I'll let him go this far, he can answer yes or no, but I am not going to make him give details of it. You understand what I mean, Mr. Belk?

A. Yes, Your Honor. I ask Mr. Rosen if he would ask me the question again.

THE COURT: In substance you asked him that the information that the informer gave him, did he give also information as to what he based that on from the standpoint of it being stolen merchandise.

A. Yes, sir.

MR. ROSEN: I understand your Honor won't let me pursue that any further?

THE COURT: I don't think it's proper. In other words, as I say, I'm not going to let you do indirectly from the standpoint of revealing who the informant is, information that you can put two and two together and get four, to wit his name.

Q. So Mr. Belk, at the time you arrested Sox and opened that van truck, you were relying substantially on the information the informer had given you supplemented slightly

by information you had gotten out of Charlotte, is that right?

A. Yes, sir. The information received from the informant, plus what I received from my Charlotte office.

Q. And the Charlotte office didn't tell you that any goods moved into South Carolina, they simply told you, I assume, there had been a theft of some ladies garments?

A. Yes, sir.

Q. They didn't know where they had moved to?

A. No, sir. They did not know where the clothes had gone.

Q. So you completely relied on the informer with respect to these goods coming out of North Carolina at the time you made your arrest?

A. Well, plus the fact that the truck was a U-Haul-It truck from North Carolina, with a North Carolina license tag on it, sir.

Q. Mr. Belk, would you describe the truck to me, was it a van truck covered van truck?

A. Yes, sir.

Q. And there was a door on the back?

A. Yes, sir.

Q. And that door had what type of lock, padlock?

A. Had, I believe, a Yale lock. I'm not sure whether it's a Yale or not, but a Yale type lock. I have the lock, sir.

Q. That was the only entrance to the van part of the truck?

A. That is correct, sir.

Q. And the cab was open, of course. The cab of the truck, or front of the truck, the driver's seat part I mean those doors were open, they weren't locked because you arrested Sox, I think, as he was getting in?

A. Right.

Q. So they were open?

A. Right. Mr. Rosen, I think he was already in the truck at the time I arrested him, and I believe the keys were in the ignition.

Q. And the motor hadn't been started yet?

A. I don't believe so, sir.

Q. Excuse me, Your Honor, I would like to ask for the record the name of the informant.

THE COURT: Very good.

Q. Mr. Belk, would you state the name of this informer, who you referred to in your testimony?

THE COURT: Yes, sir. I understand.

MR. SIMPSON: Your Honor, of course we object.

Q. How far from town is this area where the truck was, and where you made your arrest, Dorchester Road?

A. Right off Dorchester Road.

Q. Would that be about five or six miles from the city limits, or just roughly?

A. It is about fifteen or twenty minutes drive. The exact mileage, I just do not know.

Q. Well, is that the normal drive in traffic, but in the absence of traffic it wouldn't be that long a ride, depends upon the time of day?

A. Depends on the time of day, how fast you're driving, sir.

Q. All right, sir, and if there isn't traffics hour, it would probably be ten or fifteen minutes from the city would it not?

A. It was, as well as I remember, Mr. Rosen, I think it took about twenty minutes to drive from the Patio to the area where the truck was parked, going out 61, 7 and Azalea Drive.

Q. Mr. Belk, you did testify Mr. Sox told you there were two men in town with—you testified the informer knew of Mr. Sox, or knew of one man. Are you certain the informer didn't know of the other men?

A. He also knew of two other men that he told me about. He did not know their identity, or where they were.

Q. He knew they were in town?

A. Yes, sir.

MR. ROSEN: Thank you, Mr. Belk. We have nothing further.

MR. MORRISON: May we examine the witness on behalf of the accused, Pridgen?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. MORRISON:

Q. Mr. Belk, about what time of day did your office receive the information concerning the alleged theft?

A. That was from the informant? Right around 12:00 o'clock, right around noon time.

Q. You were in the office at that time?

A. No, sir.

Q. So you did not receive the information, did you, yourself?

A. The informant called my office looking for me.

Q. But you did not talk to him?

A. I didn't talk to him at that time. I got the message. I was at the U. S. Attorney's office. They called me there and I called him back.

Q. At about what time then did you speak to him?

A. It was right about noon time. I don't think there was more than ten or fifteen minutes from the time he attempted to get me until I got the message and called him back.

Q. Did you see him in person?

A. No, sir, not at that time I did not.

Q. Did you see him in person at any time prior to making the arrest of the defendant Sox?

A. Yes, sir.

Q. Did he identify the defendant Sox to you prior to the arrest?

A. I don't know that I quite follow you?

Q. Did he point out the defendant Sox to you, or identify him to you in person?

A. Yes, sir.

Q. So some time between the first information you received, and the time of the arrest you and the informant were together, and the informant in some way identified Sox to you?

A. Yes, sir.

Q. Now, for what period of time following the first information you received at 12:00 o'clock, what period of time following that, or how much time following that was it before you actually found this truck out on the other intersection of Montague and Pitt Street?

A. Well, from the time I received the information there wasn't anything that I could do at that point, sir, until I developed additional information, and it was shortly after 2:45 P.M. that I observed the truck in the area in which I had information that it would be, sir.

Q. Because they told you that at 3:00 P.M. it would be there, didn't they?

A. Yes, sir.

Q. And you had a reliable informer whom you talked to in person?

A. Yes, sir.

Q. So for the course of three hours you had information that a truck with stolen goods would be at that intersection?

A. Yes, sir.

Q. You were in the United States Post Office in Charleston, this very building, weren't you?

A. Yes, sir.

Q. Was the Commissioner Gaines Smith available?

A. Yes, sir.

Q. Did you—

A. I say yes, sir, I'm sure that he was because I got a hold of him that evening.

Q. Does he have an office in this building?

A. Yes, sir.

Q. Did you make an effort to see him during the three hour period?

A. No, sir.

Q. Doesn't he also have a law office within a half block of this building?

A. Yes, sir.

Q. Did you make an effort to contact him?

A. No, sir.

Q. Did you at any time make any effort to contact the Commissioner to obtain an arrest warrant?

A. I did not, sir.

Q. Was there any reason why you could not have done so during that three hour period?

A. Yes, sir.

Q. Please state that reason?

A. I don't know that—I didn't know what state the clothes from; I did not know how much was involved; whether there was more than the $5,000 that the statute provides for sir. I couldn't describe the clothes. I had no idea where they had been stolen, or if in fact they were. In other words, I had the information from the informer that I felt that I needed to substantiate.

Q. Didn't the informant in fact tell you that there was a truck load of stolen dresses?

A. Yes, sir.

Q. Didn't he give you other particulars in detail which would have been sufficient to obtain a warrant on information and belief?

A. No, sir.

Q. When did you obtain the information from the Columbia office, about what time?

A. It was between 4:00 and 5:00 P. M., Sir.

Q. That information certainly gave you enough information then to obtain an arrest warrant, did it not?

A. Yes, sir. I think that it probably would. I just don't know.

Q. And where were you geographically when you received this information on your radio?

A. I was in the North Area, sir.

Q. Could you have dispatched anyone of four or five other agents at that time by radio to stop by the Commissioner's office, or any Magistrate's office and obtain an arrest warrant?

A. Mr. Morrison, at that particular time I don't feel that I could have. Now, if you're asking me if I had—if a man could have gone over, yes, I think he could have, but I was trying to be absolutely certain that I had probable cause before doing anything. Also that I knew that I knew who all was involved.

Q. Are you finished now?

A. Yes, sir.

Q. Mr. Belk, let me get this straight. At about 4:30 you were parked in the North Area, were you not?

A. Yes, sir.

Q. You were observing a parked van truck, isn't that correct?

A. Yes, sir.

Q. There was no one in the truck?

A. That's correct, sir.

Q. So there's no question about this truck escaping you at that time, it was broad daylight, you had it under constant surveillance, and no drivers in or around the truck, that's correct isn't it?

A. That's correct, sir, so far as I know.

Q. You received information on your radio which verified what your informant had already told you?

A. Verified the fact that there had been a theft of approximately $35,000.

Q. $35,000?

A. Yes, sir.

Q. Stolen from a particular manufacturer in North Carolina?

A. Yes, sir.

Q. So it met all of the Federal requirements for your jurisdiction?

A. At that particular time I did not know the identity of the individual involved.

Q. You knew the identity of John Carroll Sox, didn't you?

A. At that particular point I did not, no, sir.

Q. You had not been told that John Carroll Sox was one of the men?

A. Not at that particular point, that I did not know John Carroll Sox's name at that point, no, sir.

Q. But you had observed a man at the corner of Montagu and Pitt Street driving this vehicle whom you described very accurately from the stand. You don't have to know the name of the individual to obtain a warrant, do you?

A. No, sir.

Q. All right, sir.

A. But normally they want it.

Q. So you could have at that time obtained a warrant against John Doe, an unknown individual on the basis of the information you had?

A. I don't think my U. S. Attorney would have given it to me, sir, on a John Doe.

Q. Did you talk to him about it?

A. I maintained contact with his office, yes, sir.

Q. And you maintained no contact with the Commissioner during this time, you said you talked to him later, did you talk to him by this time?

A. No, sir. We don't contact the Commissioner until we get authority from the U. S. Attorney's office to swear out the—or file a complaint or to get a search warrant.

Q. Well, what time did you talk to the Commissioner?

A. Not until after the arrest had taken place, sir.

Q. Some time after 6:30 then?

A. Yes, sir.

Q. Now, what time did you arrive at the scene in the North Area to take the truck under surveillance?

A. I followed it up, sir.

Q. I know. What time did you arrive there?

A. Arrived there shortly after 4:00 o'clock, sir.

Q. You left Montagu and Pitt about 3:00?

A. About 3:15.

Q. Went over to the drive-in, stayed there a little while and arrived at the North Area about 4:00 o'clock?

A. 4:00 o'clock, or a few minutes after.

Q. The truck never really moved again after it arrived until you moved it following the arrest?

A. That's correct, sir.

Q. So from 4:00 o'clock until 6:30 the truck was parked, you had it under surveillance?

A. Yes, sir.

Q. At 4:30 you had all the information you needed to make an arrest?

A. I don't know that I had all the information that I needed, sir.

Q. Did you receive any information subsequent to 4:30 that helped you make the decision?

A. Yes, sir.

Q. What was that, sir?

A. The information from the informant that made me feel that those were definitely the clothes that had been stolen out of North Carolina, sir.

Q. All right, sir, and do you know about what time that would have been?

A. That would have been between 5:00 and 6:00 P.M.

Q. And did you make any attempt during that interval to obtain the warrant?

A. No, sir.

Q. You did not.

A. No, sir.

Q. Now, what was the information you obtained from the informant? That completed your investigation so to speak that allowed you to arrive at the conclusion it was all right to make an arrest?

MR. SIMPSON: Your Honor, we're going to object. He's

going into specific information furnished by the informant. Again that could lead to the disclosure of the informant.

THE COURT: Well, of course, I don't know what is was just like counsel doesn't. The only thing I can tell you is this, Mr. Belk, you're experienced from the standpoint of the substance of the information, if it is possible to so to speak of divulging what the additional information was without the chance or the probability of by revealing it divulging who the informant is, I wouldn't ask you to answer.

A. Your Honor, if I were to I think I would definitely reveal my informant.

THE COURT: I don't think he would be required to, Mr. Morrison. The issue is, did he get information, was it trustworthy and reliable? Not what the information was.

MR. MORRISON: Excuse me, Your Honor.

Q. Now, Mr. Belk, you stated that you made a telephone call to the informer from the United States Attorney's office, isn't that correct?

A. Yes, sir.

Q. Did he leave a telephone number, or did you have his telephone number?

A. I had his number, sir. But he may have left it also, but I knew what his number was.

Q. Yes, and did you confirm with him who he was, and that he had made this call to your office?

A. Yes, sir.

Q. You satisfied you were speaking on the telephone to the informer whom you had been dealing with?

A. Yes, sir.

Q. Is this the same informant that you had in the North Area with you later that afternoon?

A. I'm speaking of only one informant, that is correct, sir.

Q. And the informant who subsequently identified Sox

to you, then is the same informant who gave you the telephone information?

A. Yes, sir.

Q. And did he make a personal identity of the truck, or of Sox, or of the other party in the truck with Sox?

MR. SIMPSON: We object to that, Your Honor. He's going right back to trying to get the same identical information that he's asking in the other question, sir.

THE COURT: Well, hasn't he already in substance testified this, Mr. Morrison, in response to either yours, or Mr. Rosen's question previously, that some time between 5:00 and 6:00 o'clock that the informant personally identified and pointed out Sox to him?

Q. That's the question I don't know the answer to, Your Honor. He answered that in such a manner I didn't understand.

THE COURT: I thought that's what he testified to.

A. Your Honor, not during—in other words, I think Mr. Rosen wanted to know if the informant pointed out—

Q. No, I asked you that question. I wasn't sure of the answer.

A. Sox to me, and I said he did point out Sox to me, the truck also was pointed out to me by the informant.

THE COURT: Approximately at what time, and then I'm going to cut it off there.

A. Your Honor, it would have—your Honor, if I answer the question, I'm afraid I'll give him away.

Q. I don't see—

MR. ROBINSON: Your Honor, that is part of the objection. At the time the informant is keyed in with the identity of the informant.

THE COURT: If you go back and read the record, he already said.

MR.SIMPSON: Your Honor, I think the record would reflect he has testified to two things: he received additional

information; there is no indication from his answer, as I interpret it, the identity was the additional information, sir. I think this is what has counsel confused.

MR. MORRISON: I think that's exactly what he did testify, that's why he said he couldn't obtain the warrant because he didn't know the name of the party.

MR. SIMPSON: That's not what he said, sir.

THE COURT: Well, of course, I've gone further than you're entitled to go in allowing you to cross examine him as to that. I think it is material, however, from the standpoint as to when he secured the information. But to go into the details of it, I don't know anything about this case, but if it's a real *bona fide* case there's no penny ante operation; and I'm not going to get an informer killed over the thing, or put in a position to where somebody might feel awfully upset about it, the information that he has given to the Government. I'm just not going to do that.

MR. MORRISON: Your Honor, may I make my point clear then, sir? I am not attemping to obtain the identity of the informer. One of the bases of our motion is that in argument we will enlarge upon, is that there was ample time to obtain an arrest warrant. I think the cases clearly infer that where it could be obtained it should be obtained.

THE COURT: Depends on the circumstances of each individual case, of course.

MR. MORRISON: But we did not have any flight; we did not have any chase. We had a man sitting quietly in the North Area of Charleston better than two hours observing a parked truck. Our contention would be, even if he did not have enough information until 4:30 or 5:00 o'clock, as I understand the reply to his question, that he could very simply have obtained a warrant.

THE COURT: I understand that. We will come to that. What question is it you want to put to him, because all the argument is premature?

MR. MORRISON: Yes, sir, but I want to obtain from him an understandable answer to my question, and that is when did he obtain the identity of the accused Sox because he says—

THE COURT: Don't argue, just tell me what you want.

MR. MORRISON: That information we would like.

THE COURT: You mean what time in that afternoon for his best recollection when he obtained the information from the standpoint of the identity of Sox?

MR. MORRISON: Yes, sir.

THE COURT: I'll let you go that far as to your best recollection, not the circumstances under which it was done, but the time.

A. Your Honor, I don't believe that I received his true identity until actually I arrested him. I did not know his true name until I actually took him into custody. I had a fictitious name.

MR. MORRISON: Well, Your Honor, in the alternative, then, we would like to ask what time did he receive the identity of the driver, not withstanding what his name may be, but what time did you ascertain that was the truck, and that was the driver you were looking for?

A. That would have been between 5:00 and 6:00 P.M., sir.

Q. And the arrest was made at approximately 6:30?

A. Yes, sir.

Q. The truck did not move from that time on?

A. No, sir, it did not.

Q. All right, sir. One further item I would like to cover by questioning the witness, Your Honor, and that is, Mr. Belk please clarify this for me, your informer, as I understand, did not tell you from whence these articles of clothing had been misappropriated or where they came from, or when or who took them, is that correct?

A. That's correct, sir.

Q. He only knew that there was some stolen goods in Charleston in that certain truck?

A. Yes, sir.

Q. That is substantially all the information he had?

A. Yes, sir.

Q. And there were three men involved?

A. Yes, sir.

Q. All right, sir. We have nothing further, Your Honor.

RE-DIRECT EXAMINATION

BY MR. SIMPSON:

Q. Will you state whether or not his information furnished you was that it was out of state?

A. Yes, sir. He stated it was from out of state, sir.

MR. SIMPSON: We have nothing further, Your Honor. Come down, Mr. Belk.

TESTIMONY OF GOVERNMENT'S PRINCIPAL WITNESS AT TRIAL OF CASE

Direct Examination of Harry C. Belk, witness for the Government by Thomas P. Simpson, Assistant United States Attorney:

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. You received information from an informer. As a result of this information what did you do, Mr. Belk? Did you go anywhere, or do anything after you had a conversation with the informant?

A. I did, sir. I sat up a surveillance.

Q. All right. You say you set up a surveillance. Did you do it by yourself?

Q. No, sir. I solicited the assistance of other F.B.I. agents in Charleston.

Q. Where did you set this surveillance up?

A. At Montague and Pitt Street in Charleston, South Carolina.

Q. At approximately what time did you set this surveillance up?

A. At approximately 2:45 P.M., on October 19, 1966.

Q. All right, sir. While you were in the neighborhood of Pitt and Montague?

A. That is correct, sir.

Q. In the neighborhood of Pitt and Montague, what if anything did you see involving any of the defendants in this case?

A. I observed a U-Haul-It truck drive up and park in the area of Pitt and Montague Street. The truck was bearing 1966 North Carolina license 91H. I observed an individual subsequently identified as the defendant, John Carroll Sox, drive this truck. He made contact with person identified as Theodore L. Floyd. Thereafter I saw them go over and look at the truck.

Q. Let me ask you this, Mr. Belk. Will you state whether or not the truck was opened on that occasion?

A. It was not, sir.

Q. After this you say they went over and looked at the truck, what if anything happened after that, sir?

A. After they went over and looked at the truck and appeared to converse for a short period of time, Floyd got into a Chevrolet automobile convertible that he was driving, and the defendant, Sox, got into the truck. The truck followed Floyd to the area of the Fork and Patio No. 1, which is close to the Ashley River bridge. They arrived there, oh, somewhere in the neighborhood of around 3:23-25 P.M. They both parked, got out of their respective vehicles, and I couldn't observe too much of what they themselves were doing, but after a short period of time, they re-entered their vehicles, with Floyd leading the way, and Sox following in the truck, they drove out Highway 61, Highway 7, Azalea Drive, over to the area of Veneer and Scott Streets.

Q. What type area is that, Mr. Belk?

A. That is residential and commercial, sir.

Q. All right, sir.

A. Mixed area.

Q. After they got in the Veneer Street area, what if anything did you have under observation, or surveillance all this time?

A. That is correct, I did have them under observation at all times, sir.

Q. Now, when you say entered the truck, what portion of the truck?

A. The driver's side, sir. He was in the driver's seat at the time I took him into custody.

Q. All right, sir. You say you advised him of your identity?

A. I advised him of my identity and the fact that he was under arrest.

Q. After you did that, where did you take him immediately, sir?

A. I immediately placed him in an F.B.I. automobile, permited him to read a written form reflecting what his rights were.

Q. Mr. Belk, without going further, I ask you to look at that, sir, and see if you can identify it?

A. Yes, sir.

MR. FEDOR: No objection.

MR. SIMPSON: Your Honor, we offer this as Government's Exhibit No. 5.

THE CLERK: Government's 5.

Q. Mr. Belk, I hand you Government's Exhibit No. 5, and ask you now sir to describe that exhibit fully?

A. This is a printed form, which is entitled "Your Rights," and it sets forth in paragraph form what his Constitutional rights are. The next paragraph is entitled "Waiver," which reflects that he has read this statement and does not want a lawyer and he is willing to talk to an F.B.I. agent.

Q. Was that form, I believe, you already said was given to Mr. Sox immediately upon him being placed in the F.B.I. car?

A. Yes, sir.

Q. He read it in your presence?

A. Yes, sir, he read it in my presence.

Q. Did he sign it, sir?

A. He signed it in my presence.

Q. All right, sir. Is it also witnessed?

A. Yes, sir. It is witnessed?

Q. Mr. Belk, after this waiver was executed, did you have occasion to interview the defendant, Sox?

A. Immediately thereafter I did interview him in the Bureau automobile, sir.

Q. Describe for the Court and Jury this interview, what took place, what questions you asked, what answers you received?

A. He immediately denied being in Charleston for any illegal purpose. He stated that he was moving the truck for a couple of friends; that he had met in Charleston; that he had loaned them money to check into a motel; that he had not driven this truck from North Carolina to South Carolina.

* * *

Q. Just one second. I ask you to look at what is in that envelope and see if you can identify it?

A. Yes, sir.

Q. Did you remove this from the truck yourself?

A. I did, sir.

MR. FEDOR: No objection.

THE CLERK: Government's 6.

Q. Mr. Belk, I had you Government's Exhibit No. 6, a lock and key, and you already said you removed that from the doors of the van type truck?

A. I did, sir.

Q. Mr. Belk, where did you get the key to unlock that lock?

A. From the defendant, John Carroll Sox.

Q. What was the circumstances under which you got that key?

A. Following placing him in the F.B.I. automobile, I asked him for the key to the truck. He initially denied having the key. I told him that it was too dark and impossible for me to run a thorough search at that particular time. He then gave me a ring of keys, a key ring with a number of keys on it. I backed up the F.B.I. automobile and turned the lights on so that it would light up the rear of the truck. I tried those keys without successfully opening the lock. I returned to the automobile, and returned the keys to him, and asked him again for the key that would open the lock, he did produce the key and stated that it was what I was looking for. He also stated that the lock belonged to him, that he had no idea how it got on the truck because the last time he had seen it, it was in his personal automobile.

Q. Did you have any discussion with him with regard to where his automobile was, sir?

A. I did, sir. He told me that his automobile was at the Orvin Court, that is in Charleston, South Carolina.

Q. Yes, sir. Subsequent to placing Mr. Sox under arrest, what if anything else did you do on that evening? What did you do, did you leave where the truck was, Mr. Belk?

A. I later on took, after opening the truck, I observed that it was loaded with ladies suits in hampers that were marked Carolina Casuals, Inc., and also the name Lori, L-o-r-i. I did that in the presence of the defendant, John Carroll Sox.

Q. All right sir. After opening the truck and identifying the contents, what did you do later that night, sir?

A. I locked the truck back with the same lock and retained the key myself; and then I brought the defendant, John Carroll Sox, down to my office, where I made arrangements for a hearing, sir.

Q. Later that night was that truck moved under your supervision ?

A. Yes, sir.

Q. By agents under your supervision

A. Yes, sir, it was moved, and the defendant John Carroll Sox, was with me at the time. It was moved to the Avis Garage on Calhoun Street and in the locked condition and we locked the front doors thereafter, sir.

* * *

Cross Examination of Harry C. Belk, witness for the Government by David A. Fedor, Attorney for the Defendant John Carroll Sox:

Q. You then stated you had your contact with your informant at 5:00 P.M.?

A. Between 5:00 and 6:00, sir.

Q. Were you able to ascertain, at that time, who the defendant was?

A. I learned that the—which defendant?

Q. This defendant, Mr. John Sox?

A. I learned at that time that his name was Jack Carter.

Q. Did you have a description of him?

A. Yes, sir.

Q. You had ample description to issue an arrest warrant, didn't you, on information and belief?

A. I think that is a legal question. In my opinion, I don't think so, sir.

Q. In your opinion you never issued a similar warrant under similar circumstances?

A. I never issued one, sir?

THE COURT: Just a minute. That is a matter that was a question of law that has been gone into. There is no issue as to the arrest in this matter.

MR. FEDOR: Your Honor, I wasn't attorney of record at that time.

THE COURT: Well, you've got a transcript of it, haven't you? I've been watching you read it.

MR. FEDOR: Watching me skimming through it. I didn't have an opportunity to really read it.

THE COURT: Well, do you want an opportunity to read it?

MR. FEDOR: Yes, sir, I would.

THE COURT: All right, sir. Just have to take them out a little bit and let the gentleman read his transcript.

(The jury was excused from the courtroom at 3:10 P.M.)

THE COURT: Now that the jury is out, the point that they object to, and correctly so, that was a preliminary issue that was brought before the court on the motion to suppress, as is reflected by the transcript there. I have ruled on it. If I'm wrong, of course, you're in a position to take advantage of it on appeal. But as far as the substantive ruling of the court as to the issuance of the warrant, and as to whether a warrant was necessary under the circumstances, that has been passed on already by this court.

MR. FEDOR: Yes, sir. I'm well aware of that fact. I believe, unless I'm in error, Your Honor, this is quite possible, that in the case law that if you don't make the same objection at trial, there is sometimes a feeling that it has been waived.

THE COURT: Well, of course, you can make your objection, but the point that I'm going into is not an issue of fact for the jury as to whether or not it was an unlawful arrest, or an illegal seizure the court has ruled on that.

* * *

Q. Now, you at a later time then took the key from Mr. John Sox?

A. Very few minutes later, yes, sir. I didn't take it away from him, he gave it to me.

Q. You had him in the back seat of the F.B.I. car, didn't you?

A. That is correct.

Q. How many other agents did you have with you at the time?

A. As well as I remember there was only one other agent with me at the time. Now, there were other agents around when the initial arrest was made, but during the interview itself, there was only one other agent in the car with me.

Q. How did you word your request for him to give you the key?

A. I asked him for it, sir.

Q. Just that plain?

A. Yes, sir.

Q. Did you also tell him that you could have him searched and stripped there?

A. No, sir. I didn't tell him that I could have him stripped there, not there, no sir.

Q. Did you at any time make that statement?

A. Yes, sir.

Q. Did you make that statement?

A. Yes, sir.

Q. So, he didn't actually give it to you voluntarily, did he? He was a little bit coerced, that wasn't voluntary, was it?

A. I don't imagine that it was voluntary, sir, because, he was in my custody at that time.

MR. SIMPSON: Government rests, Your Honor.

COUNT OF INDICTMENT UPON WHICH PETITIONER WAS CONVICTED

The third and last count of the indictment charges again the defendant, Sox, in the jurisdiction of this court did receive and conceive stolen goods and merchandise of the value of $5,000 or more moving in interstate commerce from Wilson, North Carolina, to Charleston, South Carolina, knowing the same to have been stolen.

* * *

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

NO. 11,622

UNITED STATES OF AMERICA, *Appellee,*

VERSUS

JOHN CARROLL SOX, *Appellant.*

Appeal from the United States District Court for the District of South Carolina.

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

CLEMENT F. HAYNESWORTH, JR.
Chief Judge, Fourth Circuit

Filed January 11, 1968
Margaret L. Davis, *Chief Deputy Clerk*

A true copy, Teste:

Chief Deputy Clerk,
U. S. Court of Appeals for the
Fourth Circuit.

SUPREME COURT, U. S.

APR 4 1968

JOHN F. DAVIS, CLERK

No. 1206

In the Supreme Court of the United States

OCTOBER TERM, 1967

JOHN CARROLL SOX, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
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BEATRICE ROSENBERG,
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JOHN CARROLL SOX, PETITIONER

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted of receiving stolen goods, in violation of 18 U.S.C. 2315. On July 13, 1967, he was sentenced to imprisonment for ten years. The court of appeals affirmed *per curiam*.[1]

The single question in this case is whether stolen merchandise discovered during a search of petitioner's

[1] The memorandum opinion of the court of appeals has not been printed.

truck incident to his arrest was inadmissible at trial because the agents had not obtained either a search warrant or an arrest warrant. Both courts below correctly held that the search was lawful. There is no occasion for further review by this Court.

The government's evidence at a pretrial suppression hearing and at trial showed that in the early morning of October 16, 1966, petitioner's co-defendant, Norman Lee Hairr,[2] burglarized a Carolina Casuals, Inc., factory in Wilson, North Carolina, and removed $35,000 worth of ladies' suits (Tr. 35, 148).[3] The clothes, stored in hampers stolen from the factory (Tr. 4, 8), were transported to Charleston, South Carolina, in a rented U-Haul-It truck. At 11 a.m. on October 19, petitioner met H. S. Carter in Charleston and, after displaying a few of the ladies' suits, offered to sell Carter a large quantity of these goods (Tr. 72). Carter told petitioner that he was not prepared to make a large purchase but that he knew someone who might be interested. He took some of petitioner's samples to Theodore Floyd, who indicated that he would be interested in buying a large lot of similar goods. Carter then arranged for petitioner to meet with Floyd on

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[2] Hairr was convicted of transporting the stolen clothes in interstate commerce, and was sentenced to ten years' imprisonment, to run concurrently with a six-to-eight year sentence imposed by a state court for burglary. A third defendant, Donald Ray Pridgen, was also charged with unlawful interstate transportation, but he was acquitted.

[3] The transcript of trial ("Tr.") and the hearing on petitioner's motion to suppress ("H") have been filed with the Clerk of this Court.

the corner of Pitt and Montague Streets at 3 p.m. (Tr. 73-74).

At approximately noon on the same day, F.B.I. agent Harry Belk received information from a reliable informer that a truck containing a load of ladies' clothes stolen in another state would be in the vicinity of Pitt and Montague Streets at 3 p.m. (Tr. 86). Belk was not aware of the Carolina Casuals burglary at that time (H. 4). Belk and several other agents established a surveillance of the area and observed a U-Haul-It truck driven by petitioner arrive and park at the designated intersection at 3 p.m. Petitioner alighted from the truck and conversed with Floyd, after which Floyd drove away in his own vehicle and petitioner followed in the truck (Tr. 87). Floyd and petitioner made a brief stop at a restaurant and then drove to another intersection, where petitioner parked the truck and rode away in the car driven by Floyd.

The agents remained at the site of the parked truck, and Belk noticed that the truck bore North Carolina license plates. Belk communicated his observations by radio to the local F.B.I. office, and at that time learned of the Carolina Casuals burglary in North Carolina. Between 5 and 6 p.m. Belk met with his informer at the scene of the parked truck. The informer identified the truck and verified Belk's description of petitioner (H. 26-27, 36); he also told Belk that two other men, who were presently in Charleston, were involved in disposing of the stolen merchandise.

Petitioner and Floyd returned at 6:30 p.m., and petitioner was arrested after he had climbed into the front seat of the truck. After petitioner was advised of his rights and executed a waiver, he told Belk that he did not know what was in the truck and that he was moving it for a couple of friends, whom he identified as codefendants Pridgen and Hairr. Belk asked for the key to open the small padlock securing the rear doors of the truck. When none of the keys which petitioner furnished opened the lock, Belk returned to petitioner, who then gave him the proper key. Petitioner admitted that the lock was his but was unable to explain how it came to be placed on the back of the truck. Upon opening the back doors, Belk found the stolen clothes, most of which still remained in the factory hampers (H. 9).

1. When a person is lawfully arrested, the police may conduct a contemporaneous search, without a warrant, of a vehicle in that person's immediate control. *Preston* v. *United States*, 376 U.S. 364, 367; *Carroll* v. *United States*, 267 U.S. 132, 147; cf. *Cooper* v. *California*, 386 U.S. 58, 61-62. Petitioner does not deny that there was probable cause for his arrest. He contends that the search of his truck was invalid because the agents failed to obtain either an arrest warrant or a search warrant, although they allegedly had time to do so. As this Court stated in *United States* v. *Rabinowitz*, 339 U.S. 56, 66, however, the validity of a search incident to an arrest does not turn upon the practicability of procuring a search warrant:

> To the extent that *Trupiano* v. *United States*, 334 U.S. 699, requires a search warrant solely upon

> the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled. The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case.

See also *Ker* v. *California*, 374 U.S. 23, 41; *Cooper* v. *California*, 386 U.S. 58, 62.

Petitioner's argument, moreover, is premised on the erroneous assertion (Pet. 7) that the agents had probable cause to arrest him at 3 p.m. However, agent Belk could reasonably have concluded that the informer's scant information and his own observations at the time the truck arrived at Pitt and Montague Streets did not constitute probable cause to believe that the driver of the truck had committed a felony. See *Beck* v. *Ohio*, 379 U.S. 89; *United States* v. *Elgisser*, 334 F.2d 103 (C.A. 2), certiorari denied, 379 U.S. 879. The corroboration of the informer's report necessary to establish probable cause was not obtained until after petitioner parked the truck and departed with Floyd. During petitioner's absence Belk learned of the clothing theft in North Carolina, compared this knowledge with the fact that the truck bore North Carolina plates, and verified the identification of the truck and petitioner's description with the informer. This information was not obtained until after 5 p.m., less than an hour and a half prior to petitioner's arrest. Moreover, by the time agent Belk had obtained sufficient information to justify the issuance of a search warrant he also had learned that at least two other men were involved in

disposing of the stolen goods. Belk had no way of knowing when petitioner would return to the truck, and whether he would be alone when he did return. As this Court stated in *Husty* v. *United States*, 282 U.S. 694, 701:

> In such circumstances we do not think the officers should be required to speculate upon the chances of successfully carrying out the search, after the delay and withdrawal from the scene of one or more officers which would have been necessary to procure a warrant. The search was, therefore, on probable cause, and not unreasonable; and the motion to suppress the evidence was rightly denied.

2. Similarly, there is no merit in petitioner's contention that the search was unreasonable because he was coerced into giving the agents the key to the padlock on the back doors of the truck. Although the key properly could have been obtained through a search of petitioner's person, agent Belk accepted petitioner's representation that one of the keys on a key ring which he willingly produced would open the lock. Petitioner alleges that when these keys did not open the lock, Belk suggested that were it not for the location, he would subject petitioner to a "strip search." Petitioner then produced the proper key, and explained that he had not anticipated that his lock had been placed on the truck. Since the agents could have searched petitioner and seized the key without his consent, there was nothing improper in the manner in which agent Belk elicited petitioner's cooperation.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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